

Report to Congress
On
Reporting Requirement for Certain Defense
Acquisition Activities



Office of the Under Secretary of Defense for
Acquisition and Sustainment

February 2023

The estimated cost of this report for the Department of Defense (DoD) is approximately \$3,830 for the FY 2022-2023, including \$3,830 in DoD labor.
Generated on 2023Jan13 RefID: 0-3807429

Requirement

Section 825 of the National Defense Authorization Act (NDAA) for FY 2022 (Public Law 117-81) directs the Secretary of Defense to establish procedures to identify organizations performing on individual projects under the following types of awards:

- Other transaction agreements pursuant to the authorities under section 2371 and 2371b of title 10, United States Code (U.S.C.) (now section 4021 and 4022¹);
- Individual task orders awarded under a task order contract (as defined in section 2304d of title 10, U.S.C. [now section 3401²]), including individual task orders issued to a federally funded research and development center (FFRDC).

Section 825 also requires the Secretary of Defense to report annually on both initial and follow-on agreements for the two types of awards, including data elements such as the participants to the transaction, the date awarded, and the amount. In addition, the Secretary of Defense is directed to collect information on individual agreements and activities described in this section and associated funding in an online, public, searchable database.

Lastly, section 825 directs the Administrator of the General Services Administration (GSA) to update the Federal Procurement Data System (FPDS) to collect the data elements required.

This report was due to Congress on December 27, 2022; however due to required coordination with the Services and other organizations within the Office of the Secretary of Defense the report was delayed.

Background

Other Transaction (OT) agreements are legally binding instruments that are alternatives to traditional Government procurement contracts when the requirements for OTs are met. OTs allow for innovative business practices and provide the agility to acquire covered items and services. OTs are intended to attract nontraditional defense contractors and small businesses with leading edge technologies to enable acquisition of innovative technologies. They allow for flexibility in terms of the award process and the terms and conditions.

OTs for prototype projects under section 4022 “are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.”

¹ Section 1841 of the William M. (Mac) Thornberry NDAA for FY 2021, Public Law 116-283, transfers sections 2371 and 2371b to sections 4021 and 4022 of title 10, U.S.C. This change is effective January 1, 2022 by section 1801(d)(1). Section 1701(u)(2)(B) of the NDAA for FY 2022 transferred section 4002 to section 4021, and section 4003 to section 4022 of title 10, U.S.C. Further references in this report are to sections 4021 and 4022.

² Section 1820 of the William M. (Mac) Thornberry NDAA for FY 2021, Public Law 116-283, transfers section 2304d to section 3401 of title 10, U.S.C. This change is effective January 1, 2022 by section 1801(d)(1). Further references in this report are to section 3401.

Section 4022 also provides authority for follow-on production OTs and contracts, without competition, if specified conditions, including successful completion of the prototype are met. OTs for research projects under section 4021 are transactions other than contracts, cooperative agreements, and grants to carry out basic, applied, and advanced research projects.

Section 3401 defines a task order contract as a contract for services without a firm quantity specified that allows for orders to be placed against the contract.

Federal Acquisition Regulation (FAR) 35.017 covers the establishment, use, review, and termination of FFRDCs and related sponsoring agreements. Per FAR 35.017-6, the National Science Foundation (NSF) maintains a master Government list of FFRDC entities.

Discussion

The Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD (A&S)), Defense Pricing and Contracting (DPC), obtained data from FPDS in response to this Congressional reporting requirement. Appendix A of this report lists the DoD OT agreements and individual task orders awarded to FFRDCs that were reported to FPDS in FY 2022. It includes both initial and follow-on agreements. The data is summarized in the table below.

Summary of FY 2022 DoD Actions Covered by Section 825

	Number of Actions	Dollars Obligated	Number of Vendors
Other Transactions	4,382	\$10,905,696,159	902
Task Orders Awarded to FFRDCs	1,316	\$2,411,397,091	8

The entire set of individual task orders for services awarded by DoD in FY 2022 consists of nearly 50 million contract actions amounting to \$116 billion in obligations. Because of the size of the larger data set, the appendix only includes detailed records for individual task orders awarded to FFRDCs.

GSA has recently made several updates to FPDS at the request of DoD. The ability to identify a follow-on production OT agreements as distinct from a prototype OT agreements was deployed in FPDS on June 28, 2019, in the ‘Type of Agreement’ data element.

On June 25, 2022, FPDS was updated to capture whether or not an OT award was made to a consortium (Yes/No answer). If the response in the FPDS data field is “Yes” then the system prompts the user to identify the primary consortia member’s Unique Entity ID (UEI). The UEI will pull over the primary consortia member’s name and address information from the System for Award Management (SAM). This change provides visibility into the individual business performing work on a transaction awarded to a consortium. Therefore, all the participants to the transaction are now being collected in FPDS using the existing vendor name data field and the new consortia member data field.

The Department is also working on improvements to the Annual Report to Congress on OTs³ to improve OT data and transparency. DPC will add elements to the data call requiring DoD Components to manually identify the follow-on production OT agreement linked to an initial prototype agreement, as well as any follow-on FAR-based contracts that may be used instead of follow-on production OT agreements.

The Federal Change Control Board for the Integrated Award Environment approved a DoD change request at the March 2022 meeting. DoD submitted the change request to better identify FFRDC entities in SAM using the annually updated NSF list. This change will enable users to produce consistent reports using FPDS data to identify procurements awarded to FFRDCs, consistent with the new NDAA requirement. GSA has not provided DPC with a current estimate regarding timeline for implementation.

FPDS is a centralized web-based eBusiness tool used by the federal government's executive agencies to report and maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value. Also, in accordance with the NDAA for FY 2008, FPDS collects data from federal agencies issuing OT agreements for prototype or production. Information on individual agreements and associated funding described in section 825 are available from FPDS on the official Government SAM.gov website, which fulfills the requirement in section 825(f) for an online, public, searchable database.

Summary

The Department of Defense continues to work towards increased transparency of data for OT awards as required by section 825. Various changes to FPDS have made it easier to collect data on initial prototype and follow-on production OT agreements as well as the consortia participants involved in OT agreements. GSA's pending changes to FPDS will also improve reporting for awards made to FFRDCs.

The Department plans to include this section 825 recurring reporting requirement in DoD's FY 2023 Report on Use of Other Transaction Authority for Prototype Projects required by section 873, of the John S. McCain NDAA for FY 2019 (Public Law 115-232), as amended by section 819 of the NDAA for FY 2020 (Public Law 116-92). That requirement calls for the Secretary of Defense to submit a report by December 31 each year through FY 2023.

³ Pursuant to section 873 of the John S. McCain NDAA for FY 2019 (Public Law 115-232), as amended by section 819 of the NDAA for FY 2020 (Public Law 116-92). In addition, page 153 of the Joint Explanatory Statement (JES) accompanying the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act for 2019 (Public Law 115-245) requests that the Department report to the House and Senate Appropriations Committees on OTs on a quarterly basis beginning in FY 2019. Section 873, as amended, requires the Secretary of Defense submit a report to the congressional defense committees on the use of the OTs by December 31 of each year through 2023.